IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 41

THE NEW YORK CENTRAL RAILROAD COMPANY,
Appellant,

v.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, THE STATE OF NEW JERSEY, BERGEN COUNTY, NEW JERSEY, ROCKLAND COUNTY, NEW YORK, the NEW JERSEY MUNICIPALITIES OF BERGENFIELD, BOGOTA, DUMONT, HARRINGTON PARK, HAWORTH, NORWOOD, RIDGEFIELD PARK, TEANECK and WEEHAWKEN, the CITIZENS UNITED TRANSIT COMMITTEE, an unincorporated association, BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS and ROBERT J. KILPATRICK,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

STATEMENT AS TO JURISDICTION

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STATEMENT AS TO JURISDICTION

Introductory Statement

Appellant (the Railroad) appeals from the final decree of the United States District Court for the District of New Jersey, entered on December 31, 1957, setting aside orders and a certificate of public convenience and necessity issued by the Interstate Commerce Commission (the I.C.C.). The Railroad submits

this Statement to show that the Supreme Court of the United States has jurisdiction of this direct appeal and that the questions presented are substantial.

Opinions Below

The opinion of the District Court for the District of New Jersey is not yet reported. The opinion of Division 4 of the I.C.C. is reported at 295 I.C.C. 385 but the later opinion of the entire Commission is not yet reported. Copies of the District Court's opinion and of the two I.C.C. opinions are annexed hereto as Appendices A, B and C, respectively.

Jurisdiction

This suit was brought, under 28 U. S. C. §§1336 and 2321, by the State of New Jersey as well as by its public utility regulatory commission to set aside the orders and the certificate of the I.C.C. authorizing the Railroad to abandon operation of its two ferry lines. The final decree of the District Court annulling the I.C.C. orders and certificate was dated December 30, 1957 and was entered on December 31, 1957. The Railroad's Notice of Appeal was filed in that Court on January 31, 1958. The jurisdiction of the Supreme Court to review this decree by direct appeal is conferred by 28 U. S. C. §§1253 and 2101(b). There are many decisions which sustain the jurisdiction of the Supreme Court to review the decree on direct appeal in this case. Two of them are: *Pan-Atlantic S. S. Corp.* v. *Atlantic Coast Line R. R.*, 353 U. S. 436 (1957); *Alleghany Corp.* v. *Brswick & Co.*, 353 U. S. 151 (1957).

Questions Presented

1. Whether the Railroad's proposed complete cessation of operation of each of its two ferry lines across the Hudson River between its ferry terminal at Weehawken, New Jersey, and its ferry terminals at 42nd Street and Cortlandt Street, respectively, in New York City, New York, is an abandonment of a line of railroad, or a portion thereof, within the meaning and scope of Sections 1(18-20) of the Interstate Commerce Act.

2. Whether the I.C.C. had jurisdiction under said statutory provisions to issue its certificate of public convenience and necessity dated September 27, 1956 (in its Finance Docket No. 18781) that public convenience and necessity permitted abandonment by the Railroad of these two interstate ferry lines.

3. If the I.C.C. had jurisdiction to issue said certificate, whether the evidence in the record before the I.C.C. is sufficient to sustain the certificate and the finding of public convenience and necessity contained therein.

The first two questions present what is hereinafter sometimes referred to as the jurisdictional issue. The third question presents what is hereinafter sometimes referred to as the evidentiary issue.